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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195658

DATE: March 19, 1980

MATTER OF: Barbara J. Protts - Per Diem

DLG-02560

- DIGEST:**
1. Young Adult Conservation Corps enrollees in Alaska were properly denied per diem allowance under competent orders providing that no per diem will be authorized where subsistence is furnished by the Government. Fact that camp did not have laundry or shower facilities does not entitle enrollees to per diem which is intended as reimbursement for additional costs rather than inconvenience resulting from temporary duty assignment.
 2. Orders issued in accordance with agency regulations providing that no per diem will be authorized when subsistence is furnished at Government expense may not be modified retroactively based on recommendation of specific per diem rate of \$8 per day where authority to establish specific per diem rate is discretionary rather than mandatory.

This decision concerns the per diem entitlement of Barbara J. Protts and eight other enrollees of the Young Adult Conservation Corps (YACC), Forest Service, Department of Agriculture. During the summer of 1978 the nine enrollees were assigned to Region 10 of the Forest Service which administers public lands with National Forest status within the State of Alaska. Their claims cover the period they were assigned to the Susitna River Basin Camps under Travel Authorization No. 10.01.00128 issued March 2, 1978.

The travel authorization applicable to all Region 10 YACC enrollees directed to travel within Alaska provides for a per diem allowance as follows:

"The average cost of lodging plus 50 per cent (50%) of the maximum per diem rate established for the locale, not to exceed the maximum

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established by the Civilian Personnel Per Diem Bulletin and listed in FSM 6543.04a. A deduction of one-fourth (1/4) of the meals and miscellaneous rate will be made for each meal furnished without charge or cost by a Government agency or accepted from a non-Federal organization or private company. When staying where subsistence is furnished by the Government no per diem will be authorized."

Because the Forest Service determined that subsistence was furnished by the Government at the Susitna River Basin Camps, the enrollees received no per diem while assigned to the camps.

It appears to be Ms. Protts' position that Forest Service regulations required the authorization of a "special per diem rate" while she was at the river basin camps where she was furnished only quarters and meals but not provided shower and laundry facilities. On this basis she contends that the request for a special rate of \$8 initiated by the Staff Director of State and Private Forestry after the enrollees' assignments were completed should be approved. The request to retroactively establish a special per diem rate was denied by the Regional Forester, one of two officials authorized to approve per diem, based on decisions of this Office holding that travel orders may not be retroactively modified either to increase or decrease a rate of per diem previously approved.

While YACC enrollees are considered Government employees only for limited purposes, Forest Service instructions provide that when performing authorized travel they will be paid per diem and transportation costs in accordance with the Federal Travel Regulations (FTR) and agency supplements thereto. With respect to per diem, section 6543.07a2(g) of the Forest Service Manual (FSM) provides:

"Special Rates. Special rates for less than the standard per diem rate may be authorized where subsistence is obtained through noncommercial sources, such as Forest Service work camps or where meals are prepared by the traveler in Government or non-commercial facilities. This will be done by establishing an amount lower than the

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standard subsistence component of the per diem rate. There is no authority for a zero per diem rate unless all items covered in the per diem rate are provided by the Government at no cost to employee."

Since the authority to establish a special per diem rate is permissive rather than mandatory, we are unable to agree with Ms. Protts' argument that the Forest Service was required to establish a specific per diem rate in connection with the enrollees' assignment to the river basin camps.

Legal rights and liability in regard to travel allowances vest as and when travel is performed under competent orders and such orders may not be revoked or modified retroactively to increase or decrease the rights and benefits which have become fixed under applicable law and regulations. 54 Comp. Gen. 638 (1975). While a travel order may be amended to correct a provision that is clearly in conflict with a law, agency regulation or instruction, we find nothing in the Department of Agriculture or Forest Service regulations to indicate that Travel Authorization 10.01.00128 is other than proper.

The language of the order establishing a meals and miscellaneous expenses rate of 50 percent of the maximum per diem rate and requiring a deduction of one-fourth of that rate for each meal furnished without charge is consistent with FSM 6543.07a3 and 6543.07a3a(1). The proviso that no per diem will be authorized where subsistence is furnished by the Government is in accordance with the following general principle set forth at FTR para. 1-7.3:

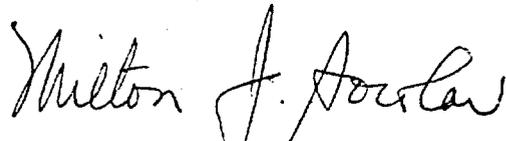
"a. General. It is the responsibility of each department and agency to authorize only such per diem allowances as are justified by the circumstances affecting the travel. Care should be exercised to prevent fixing per diem rates in excess of those required to meet the necessary authorized subsistence expenses. * * *"

In situations where an employee incurs little or no additional costs by reason of his temporary duty assignment we have held that it is the agency's responsibility to authorize

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only such per diem allowances as are justified by the circumstances affecting the travel. 35 Comp. Gen. 554 (1956), B-175608, June 19, 1972. Where an employee incurs no additional expenses the agency may and should properly refuse to authorize any per diem. B-177419, March 8, 1973. We find no basis to question the Forest Service's determination that since subsistence was furnished by the Government at the river basin camps no per diem should be authorized. The fact that the camps did not have shower or laundry facilities does not provide a basis to overturn that determination since subsistence expenses are intended to cover additional expenses incurred as the result of an employee's temporary duty assignment and not to compensate an individual for inconveniences that may be occasioned by the travel. We view the situation of Ms. Protts and the other YACC enrollees as substantially similar to that of the seasonal firefighters hired by the Bureau of Land Management, Department of the Interior, whose entitlement to per diem was the subject of our decision B-180111, March 20, 1974. In that decision we held that an administrative determination that no additional costs would be incurred by the firefighters could support a finding that no per diem was warranted.

In view of the above Ms. Protts and the other YACC enrollees are not entitled to per diem.



For the Comptroller General
of the United States